

Dewey-Burdock Public Comments

Comments related to spiritual significance

1. Do not erode the spiritual foundation of native peoples by mining in the sacred Black Hills
2. To Indigenous peoples, contamination of water also raises cultural concerns. To Indigenous peoples, water, in particular, holds special meaning and is regarded as a sacred element. Indigenous cultures all over the world recognize a simple predicate: water is life. Water is identified as the first medicine. It is the first environment in which we live while we are being carried in our mothers. It is an offering made in prayer ceremonies and is a spiritual being in and of itself. All of these factors should be considering in evaluating the requested permits.
3. The Black Hills, known as Paha Sapa to the Lakota, are the center of their spiritual and cultural universe. To the Lakota, throughout all of Creation, Paha Sapa has been "The Heart of Everything That Is." Lakota medicine man Pete Catches, describes the relationship between Paha Sapa and the Lakota:
To the Indian spiritual way of life, the Black Hills is the center of the Lakota people. There ages ago, before Columbus came over the sea, seven spirits came to the Black Hills. They selected that area, the beginning of sacredness to the Lakota people... The seventh spirit brought the Black Hills as a whole--brought it to the Lakota forever, for all eternity, not only in this life, but in the life hereafter. The two are tied together. Our people that have passed on, their spirits are contained in the Black Hills. This is why it is the center of the universe, and this is why it is sacred to the Oglala Sioux. In this life and the life hereafter, the two are together.
Many sites are sacred because it is a location where an event of great spiritual significance occurred. The late Native American scholar Vine Deloria, Jr. writes, "Tradition tells us that there are, on this earth, some places of inherent sacredness, sites that are Holy in and of themselves."30 Vine Deloria, Jr. writes, "Every society needs these kinds of sacred places. They help to instill a sense of social cohesion in the people and remind them of the passage of the generations that have brought them to the present. A society that cannot remember its past and does not honor it is in peril of losing its soul."
4. The single most highly cherished concern and interest to my people is the Black Hills. It always has been, and it always will be. I ask that the EPA reject the Dewey-Burdock application and all future applications to mine uranium in the Black Hills and to preserve its cultural, historical, social, and spiritual significance and value to the Oceti Sakowin. I pray to the Creator that these lands remain sacred and in balance, and I include you all in my prayers.
5. We know that our water is poisoned. You can look at our epi profile. You can see the cancer rates. You can see all of the illnesses that are related to poisoned water in our bodies -- in our bodies, in our spirit because of the mining that has already taken place in this territory, and the environment of this Americanized life.
6. SICANGU LAKOTA TREATY COUNCIL RESOLUTION NO. 2017-02
WHEREAS, the Sicangu Lakota Treaty Council determines that the Dewey Burdock Uranium Mine Injection Wells are within the sacred site Ki Iyanka Ocanku Sa or Red Race Track which is held as a spiritual and sacred site, and
WHEREAS, the American Indian Religious Freedom Act (AIRFA) (16 U.S.C. 1996) AIRFA establishes the policy of the federal government "to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, including, but not limited to, access to

sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites

7. The [Cheyenne River Sioux] Tribe's Rights and Trust Resources in the vicinity of the Dewey-Burdock Uranium Mine [include] historic, spiritual, and cultural resources: There are numerous sites of historic, spiritual, and cultural significance to the Tribe throughout the Tribe's large aboriginal territory, but especially within the boundaries of the lands reserved to the Tribe in the Treaty of Fort Laramie with the Sioux, Etc., 11 Stat. 749 (Sep. 17, 1851). Furthermore, the Tribe's reserved water rights themselves constitute a spiritual and cultural resource in light of the primary role that water plays in Lakota religious sacraments, which require environmentally and ritually pure water. (A map showing the Tribe's 1851 territory is enclosed herewith.)

8. The Dewey Burdock Uranium Mine Poses a Serious Threat to the [Cheyenne River Sioux] Tribe's Religious Exercise

Water is an essential aspect of the Lakota religion. It figures prominently in our theology as the origin of our creation as Lakota people and as a key aspect of how we became who we are today. In addition, water is a key component of many of our religious ceremonies. While many of our religious sacraments require either water or ritual deprivation thereof, water is an essential component of one of our most important religious sacraments, the inipi ceremony or sweat lodge. Importantly, this sacrament requires that we use only water that is both environmentally and ritually pure. As noted above, the Tribe has very limited access to water on the Reservation and relies solely on water drawn from the confluence of the Cheyenne River and the Missouri River at Lake Oahe for its drinking water and which represents reserved water rights of the Tribe. Upstream contamination of these waters in which the Tribe owns reserved water rights has the very serious potential to affect the Tribe's and its members' religious exercise in violation of the Religious Freedom Restoration Act.

Under RFRA, the "Government shall not substantially burden a person's exercise of religion" unless the Government "demonstrates that application of the burden to the person-(1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest." 42 U.S.C. § 2000bb-1(b). Tribal religious practices are significantly tied to oral tradition, ancestral lands, and natural resources.

9. Significantly, the EPA along with several other departments of the United States Federal Government, entered into a Memorandum of Understanding on Interagency Coordination and Collaboration for the Protection of Indian Sacred Sites on September 23, 2016. The Memorandum acknowledges that federal agencies hold in trust many culturally important sites held sacred by Indian tribes, and federal agencies are responsible for analyzing the potential effects of agency projects carried out, funded, or permitted on historic properties of traditional cultural and religious importance to Indian tribes including sacred sites. Additionally, international law, treaties, and jurisprudence has repeatedly affirmed the right of Free Prior Informed Consent. See Declaration on the Rights of Indigenous People, art. 10, United Nations (Mar. 2008). The purpose of Free Prior Informed Consent is to establish bottom up participation and consultation of an Indigenous population prior to the beginning of a development on ancestral land or using resources within the Indigenous population's territory. *Id.*
10. [The Dewey-Burdock site] is in the vicinity of the Black Hills, among the most sacred sites to the Lakota people. Our people lived in this area, hunted in this area, and made religious pilgrimages in this area from time immemorial. Our Tribal Historic Preservation Officer advises that the site of the proposed mine has the potential to contain numerous sites of cultural and spiritual significance.

11. Natural law is based on principles of respect and responsibility. These principles are reflected in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). Article 25 of the Declaration states, "Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally-owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard." To grant the proposed permits to Powertech, the EPA violates this internationally-recognized human right.
12. In Article 37, paragraph 1, the U.N. Declaration requires compliance with our Treaty rights: Indigenous peoples shall have the right to the recognition, observance and enforcement of treaties. These requirements gain special significance under international law where, as here, sacred lands are at risk. Article 25 of the U.N. Declaration provides that: Indigenous people have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied lands.
13. This is sacred land. The Black Hills are integral to our creation story, and remain an important place for pilgrimage and ceremony by our Tribal members. They are the spiritual center for the Lakota and Dakota Nation. The late David Blue Thunder, a prominent Sicangu ceremonial leader, explained that "The Black Hills are the heart of our home, and the home of our heart." (S. Hrg. 99-844, p. 234, statement of David Blue Thunder). It is akin to Jerusalem or Bethlehem, for Christianity and Judaism.
14. Lakota people say "Mni Wiconi" which roughly translates to "Water is Life." Anything that threatens our water in any form in this semi-arid region is of immediate concern due to the need for water, our spiritual connection to water, and the status of the area's water under treaty law. Lakota people and their allies have a history of protecting water resources from uranium mining, and we will continue to do so.
15. These sacred Black Hills that belong to us were given to us by treaty. We have spiritual significance. And historically, my tribe has also given testimony from different administrations. They have also provided resolutions that are not accepting this permit that they are requiring.
16. But I do have faith in spiritual laws and natural laws, and I do have faith in the people. The Black Hills is still owned by the Lakota Nation, Oceti Sagowin, all the Lakota-Dakota.
17. Article 25 of the U.N. Declaration on the Rights of Indigenous Peoples, a Distinctive Relationship: "Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters, and coastal seas and other resources and to uphold their responsibilities to future generations in this regard."
18. Indigenous people object to the rape of the earth on which they live. This disregard for human voices, let alone those of their ancestors and spirits, is mediocrally cruel and shameful.
19. We have spoken to people that reside in and around our area who have made comments about their relatives using certain lands for sacred and spiritual activities, burials etc. that have not been respected and are visibly contaminated by uranium activities. Blatant disrespect of an indigenous culture and historical abuse! No one should be allowed to do this to any culture!
20. As described herein, the Underground Injection Control Draft Area Permit and Proposed Aquifer Exemption decision for the Dewey-Burdock Uranium In-Situ Recovery Site poses serious threats to the Tribe's reserved water rights, hunting and fishing rights, cultural and spiritual sites, and religious exercise in ways that implicate federal statutes and treaty rights. As further described herein, as a function of its fiduciary duty to the Tribe and as a matter of federal law,

the EPA must engage in meaningful government-to-government consultation with the Tribe on the issues discussed herein and other issues that may arise.

21. "And again, that really should clearly, I think, show us that for us to then be able to make some kind of in roads ourselves, being not of Native background, to identification of sites that are traditional cultural properties that have a tie to spirituality and so on, it is not in our [Augustana College] purview to do that.
22. Along the same line, the importance of the Black Hills to Lakota people is mentioned, but not analyzed. Instead, it is mentioned and then ignored. Also, the Black Hills are considered in a historic context, rather than in a modern context that recognizes their continuing importance to the Lakota people. Cultural resources are mentioned, but no analysis is done. A thorough cultural analysis should be part of any consideration of an area that is of critical spiritual significance to the Lakota. These omissions are glaring and thoroughly undermine the Environmental Justice section.
23. And the Lakota Nation -- the importance of the Black Hills to the Lakota Nation, that is our birthplace, that is our creation story, that is where we come from. And destroying and -- not only the water that's in that area, but also the culturally and spiritually significant areas that are in that area. So I am asking that you provide us with meaningful consultations with the local tribes, including not only the Lakota Tribes, but in the surrounding states, Wyoming as well.
24. The Black Hills belong to us [Lakota]. They are historical, they are spiritually significant to our people, and we stand in opposition of the uranium mine. Mni Wiconi. Water is life.
25. We need -- we work -- as a Lakota people, in spirituality, we are connected to the land, that everything is alive -- the rocks, the trees, the vegetation, the animals. Everything is effective. When you hear the term "mitakuye oyasin," it means "all my relations." It means all the elements in the universe. And I ask them to come pay attention, to call for their attention to this center.
There's something we call a hocoka. It is where we center, where the voice -- where we call our voice from. And the Black Hills is our hocoka. It is the center of the universe.
26. My people are here spiritually. Our ancestors watch over us. If you heard the creation story, you will learn. We need to respect our Mother Earth. To think that the future generation and our children will have to grow up in a world where we cannot respect our Mother Earth and only think of themselves and their profits.
27. And I personally can say this: Mni Wiconi. This word means a lot. Mni Wiconi. Life. Water is life. There's four elements that we use in our spiritual ceremonies -- water, air, fire, and Grandmother Earth. Grandmother Earth makes an altar for us. It's universal. The whole world is the altar. Why would somebody come and start poisoning the water? It's not good. Not good for our coming generation, the seventh generation. The seventh generation is a very important generation for us.
28. A Lakota, he explained to me, is someone that claims to be an ally to the spirit of all that is. And water is part of all that is. Water is part of all creation. So if we love water, we want to protect water, we're all Lakota, and we're all related. We all breathe.
29. But I realize today we are in a spiritual war that started 500 years ago for us. Our Lakota, Dakota, Nakota people and all the Native Americans on Turtle Island that we are standing on are in a spiritual war.
30. We are concerned about the proposal to permit the construction of an in situ leach (ISL) uranium mine and deep waste disposal wells in Lakota territory, because water is central to our culture, to community development, and to Lakota existence. Without a consistent supply of

healthy water, our community and our people cannot continue to develop spiritually, economically, or socially.

31. So even though I'm a part of the Oceti Sakowin, I'm also a human being, and I know how much water is going to be used and how contaminated it will be and what the effects are going to happen medically, physically, spiritually to the people in the surrounding areas.
32. According to the National Park Service, many tribes have potential cultural affiliation with Black Hills. Traditional ceremonial activities which demonstrate the sacred nature of Black Hills to tribes include: Personal Rituals: Prayer offerings (bundles and cloths), sweatlodge ceremonies, vision quests, funerals. Group Rituals: Sun Dance. Sacred Narratives: Origin legends, legends of culture heros, and legends of the origins of ceremonies and sacred objects. Today we are seeking to: (1) continue our religious practice as we have traditionally (2) maintain the land that has ancestral significance and provides deep ties to our culture that has been severely affected by colonization and American expansion, (3) preserve the land in its natural state and maintaining its deep, religious connections, and finally, (4) protect and preserve the soil – it is the foundation of healthy land and water.
33. the draft EJ analysis as written does not allow the EPA to acknowledge the possible burden the proposed project might place on the culture, religion, or health of Native peoples.
34. Uranium mining of the Black Hills is not only an assault on Native sovereignty over a religious, cultural, and historic site for many Nations,

Comments about treaty rights

1. As described herein, the Underground Injection Control Draft Area Permit and Proposed Aquifer Exemption decision for the Dewey-Burdock Uranium In-Situ Recovery Site poses serious threats to the Tribe's reserved water rights, hunting and fishing rights, cultural and spiritual sites, and religious exercise in ways that implicate federal statutes and treaty rights.
2. Finally, the EPA must be aware that consultation required under the National Historic Preservation Act concerning cultural and spiritual resources is not sufficient to meet the United States' obligation to consult about reserved water rights, treaty rights, or other religious freedom issues.
3. The Treaty Rights of the Lakota People Under the 1868 Fort Laramie Treaty Should Be Recognized and Honored.
The Lakota have exclusive treaty rights to the Black Hills and have never waived those rights. After the Lakota were successful in defending their lands from white settlers and their victory over the U.S. military in the Powder River War of 1866-1867, the United States government sought to end the conflict in the region and initiated treaty negotiations, resulting in the 1868 Fort Laramie Treaty. The Lakota agreed to withdraw their opposition to the construction of railroads, to not attack settlers, and to withdraw their opposition to military posts in exchange for absolute rights to the land as well as hunting grounds outside the reservation. The United States pledged that the Great Sioux Reservation and the Black Hills would be “set apart for the absolute and undisturbed use and occupation of the Indians.” The U.S. agreed that no unauthorized persons “shall ever be permitted to pass over, settle upon, or reside in [the] territory.” However, after gold was discovered in the area, the U.S. government, under the direction of President Grant, failed to uphold their treaty obligations and allowed miners and non-Indians to invade lands set aside exclusively for the Lakota. After the U.S. government breached its treaty obligations by allowing miners onto land expressly reserved for the Lakota, the U.S. Supreme Court found the government guilty of an unconstitutional taking of the Black

Hills from the Lakota.³⁶ In 1876, the government withheld food rations from the Lakota in an attempt to starve them into signing an agreement giving away the Black Hills. The Lakota refused.

Article XII of the Treaty provided “No treaty for the cession of any portion or part of the reservation herein described which may be held in common shall be of any validity or force as against the said Indians, unless executed and signed by at least three-fourths of all the adult male Indians.” Even in the face of starvation, the U.S. government was only able to secure signatures from 10% of the adult male population, far fewer than the three-fourths of adult male signatures legally required by the Treaty. As such, the Lakota never consented and never agreed to give their rights to the Black Hills away. The Lakota retain their treaty rights to the Black Hills and their opposition to uranium mining in the Black Hills should be recognized and adhered to. Without following the direction of the tribe, the United States continues an unconstitutional taking and carries on a legacy of disrespect and dishonorable dealings with Indian tribes.

4. The 1868 Fort Laramie Treaty was ratified by Congress and was never amended. Under international law it is Native land. “The laws of the United States, the NRC regulations, and the individuals who sit behind those desks can honor treaty law, the life way of the Lakota, environmental laws, and demonstrate respect for Mother Earth by denying application to mine uranium.”
5. Territories governed by treaty should be protected from exploitation of people and resource. The uranium mining above an aquifer under their promised tribal lands does that. This would put the country in violation of international law, and our own Constitution.
6. The Winters Doctrine, which I discussed at the Edgemont hearings, was just upheld by a June 14, 2017 court decision for the Standing Rock Sioux Tribe in the latest North Dakota Pipeline decision. This reaffirmed their rights against water pollution. The Winters Doctrine mentioned in this case is a cornerstone of Native American Law. This confirmed their rights to an ancestral home, which implies original water rights dating from the original treaty agreement. This allows for present and future water needs along with things like hunting and fishing.
7. It violates the treaty rights of the Sioux Nation. The Pine Ridge and Rosebud reservations will be effected by this proposed mining because they take a portion of their drinking water &om the aquifers that are threatened. They also still have hunting and fishing rights in this area pursuant to the Fort Laramie Treaty of 1868.

8. SICANGU LAKOTA TREATY COUNCIL RESOLUTION NO. 2017-02

WHEREAS, the Rosebud Sioux Tribal Council has established a Sicangu Lakota Treaty Council to protect, analyze, educate, and study issues related to the Fort Laramie Treaty of 1851 and the Fort Laramie Treaty of 1868, and other related treaties;...

WHEREAS, the Sicangu Lakota Treaty Council has determined that both of the proposed injection wells are located within the 1851 and 1868 Fort Laramie Treaty Boundary lines, and therefore in violation of the Fort Laramie Treaty of 1851 and 1868,...

WHEREAS, The Sicangu Lakota Treaty Council opposes any permits to be granted by the EPA for mining, injection wells, fracking, or any type of activities that will harm the Sacred Black Hills and the Oceti Sakowin Tribes within the Fort Laramie Treaty of 1851 and 1868, and

THEREFORE, BE IT RESOLVED, that the Sicangu Lakota Treaty Council hereby strongly urges and requests the EPA to deny both permits and any future permit applications relating to Uranium mining or the extraction of minerals or rare earth elements.

9. Please be advised, pursuant inherent rights, power, and authority, as handed down through the generations and embraced by the United States Congress of the United States of America, the Black Hills Sioux Nation Treaty Council continues to serve the people (Oyate) in a representative capacity, as it has done in the years and centuries past. The Black Hills Sioux Nation Treaty Council asserts its authority pursuant the following

10. The Dewey-Burdock Uranium Mine Poses a Serious Threat to the Tribe's Treaty Rights and Reserved Water Rights

The proposed Dewey-Burdock Uranium Mine is proposed to be sited in areas that affect aquifers, watersheds, and tributaries that are hydrologically connected to the waters that affect Cheyenne River Sioux Reservation lands and waters. These lands and waters have been guaranteed to us by Treaty, and the United States must act as our fiduciary in protecting them as a matter of federal law as set forth above. In 2005, when a drought threatened the Tribe's only source of drinking water, which is drawn from an intake project at the confluence of the Cheyenne River and the Missouri River at Lake Oahe, the U.S. Army Corps of Engineers determined that a loss of this water source would devastate our Tribe. As a consequence, we are vigilant in our monitoring and stewardship of our waters. The Cheyenne River, the waterway that gives our Reservation its name, constitutes the southern border of our Reservation and flows into the Missouri River (Lake Oahe) at precisely the place where the United States has built the water intake that serves our entire Reservation. The Cheyenne River also flows through the Black Hills very close to the site of the proposed Dewey Burdock Uranium Mine. Other historical uranium mines and other metal mines have been sited near the Cheyenne River in the Black Hills.

The Tribe has collected water samples over many years from the Cheyenne River in an effort to protect the health, safety, and welfare of our people. These samples show levels of 16-32 pCiPl (Pico liter series per liter) in the Cheyenne River. This demonstrates that past uranium mining has, and future uranium mining will, migrate out of the resources and will not be contained. We have also seen high levels of radiation on the Moreau River, another tributary of the Missouri River, caused from past uranium mining upstream. In light of these facts, the Cheyenne River Sioux Tribe strongly opposes any and all current, new, or ongoing uranium mining projects in lands and waters that affect our Reservation.

The current analyses of the Dewey-Burdock Uranium Mine specifically identifies the Cheyenne River and its tributaries as an area that will be affected by the Dewey-Burdock Uranium Mine.

- 11. The goal of tribal consultation is not simply to check a box, or to merely give tribes a chance to be heard. Rather, the core objective is to provide federal decision makers with context, information, and perspectives needed to support informed decisions that actually protect tribal interests. Treaty rights, the federal trust responsibility to tribes, environmental justice, and the principles enshrined in the Declaration all must be given life and meaning in federal decisions that impact tribes.**

Trust Responsibility

1. The Federal Government Has a Legally-Recognized Federal Trust Responsibility to Protect Native American Sacred Sites.

While the necessary cultural data still needs to be collected and analyzed and the granting of the mine permits is premature without this cultural data, one thing is certain- the federal government has a trust responsibility to protect Native American sacred sites. The National Historic Preservation Act, the Native American Graves Protection and Repatriation Act, the Religious Freedom Restoration Act, and Executive Order No. 13007 all offer protections for Native American sacred sites and weigh in favor of denying the permits.

The federal government and Indian tribes have a unique legal relationship, known as the trust relationship, in which the federal government has legal obligations and duties to Indian tribes. This trust relationship requires the federal government to protect the property and resources of Indian tribes, including rights to water and protection of sacred sites. Here, there is no doubt that the proposed mining project would impact Indian people and communities.

EPA itself has taken a broad view of the role of tribal governments in policy decisionmaking. In the EPA Policy for the Administration of Environmental Programs on Indian Reservations, the EPA states, "the Agency will view tribal governments as the appropriate nonfederal parties for making decisions and carrying out program responsibilities affecting Indian reservations, their environments, and the health and welfare of the reservation populace."²⁷ In addition, EPA states it will "look directly to Tribal Governments to play this lead role for matters affecting reservation environments."²⁸ Here, the proposed permits significantly impact tribal communities and resources. EPA should adhere to its own policy and follow the lead of the tribe. The tribe has been clear in its position and its opposition to uranium mining in the sacred Black Hills.

2. It is time for the federal government to stand up to their trust responsibilities under the Winters Doctrine.
3. As a result of the federal government's trust responsibilities to the Tribe, the EPA must ensure that such trust resources are preserved in any activity that may impact the Tribe's rights, including the Underground Injection Control Draft Area Permit and Proposed Aquifer Exemption decision for Dewey-Burdock Uranium In-Situ Recovery Site.
4. our rights and trust resources extend beyond our Reservation borders as a matter of federal law, and they are rights for which the United States owes us a fiduciary duty.
5. the federal government has a specific trust duty to protect the rights reserved in the 1851 and 1868 Fort Laramie Treaties. The Tribe was a party to the 1851 and 1868 Fort Laramie Treaties, which reserved land and water to the Tribe in order to fulfill the purpose of the Reservation to provide for self-sufficiency. See *Winters v. United States*, 207 U.S. 564 (1908). The reserved water right recognized in the Winters doctrine, and reserved for the Tribe, includes the right to clean, safe water. See, e.g., *United States v. Gila River Irrigation Dist.*, 920 F. Supp. 1444, 1448 (D. Ariz. 1996).